IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5064 OF 2004

Needumbra Industries Pvt. Ltd. .. Petitioner

vs.

Smt. Geeta L.D'Souza .. Respondent

Mr. N.M. Ganguly for Petitioner.
Mr. Neel Helekar h/f Mr. Ravindra Nair for Respondent.

CORAM: B.H. MARLAPALLE, J.

Date : June 23, 2005.

P.C.:

1. Heard Mr. Ganguly, the learned counsel for the petitioner-company which has brought in question the award passed by the Third Labour Court at Thane in Reference (IDA) No.51 of 1995 on 16/1/2004 directing the respondent-workman to be reinstated in her original post with full backwages and continuity of service with effect from 14/12/1993.

2. It is submitted by Mr. Ganguly that the findings recorded by the Labour Court that the charge of absenteeism was not proved is contrary to the

evidence and in any case the punishment of dismissal could not have been termed as shockingly disproportionate. The learned counsel has taken me through the award and it was sought to be contended that the workman herself remained absent for more than 52 days continuously and, therefore, she was chargesheeted, the Inquiry Officer held her guilty and the Employer concluded that this was a fit case to award the extreme punishment of dismissal from service. This assessment done by the Management could not be accepted by the Labour Court in the facts and circumstances of this case and even otherwise the evidence recorded by the Company before the Labour Court proved the charge in its entirety. The workman could not bring any record or evidence to show that she was forcibly kept out of the factory from 5/7/1993 onwards.

3. The petitioner-management had issued show cause memo on or about 13th August 1993 alleging that the respondent-employee had remained absent unauthorisedly from 5/7/1993 onwards continuously. The same was replied to by the employee on 20/8/1993

pointing out that she was in fact prevented from reporting to work, her wages from June 1993 onwards were not paid, she had complained to the Government Labour Officer when she was prevented from performing her duties from 5/7/1993 onwards and her salary for the month of June 1993 was released only after the Government Labour Officer intervened. She, therefore, denied the charge of absenteeism and requested the Employer to release her wages for the month of July 1993 and thereafter till she was allowed to report to work. The company issued charge-sheet dated 3/9/1993 as the explanation furnished by the employee on 20/8/1993 was not found to be satisfactory. It was alleged that from 5/7/1993 she remained continuously absent till the issuance of the charge-sheet and instead of reporting to work she had fabricated false record against the company with some ill motives. It was further alleged that on account of such conduct, the company was adversely affected and, therefore, she was guilty of acts of misconduct. A domestic inquiry was ordered and the Inquiry Officer submitted his findings on or about 6/12/1993 holding her guilty of the misconduct alleged in the charge-sheet dated

3/9/1993. On the basis of the said report she was awarded the punishment of dismissal vide order dated 13/12/1993. She, therefore, raised a demand for reinstatement with consequential benefits.

4. The Labour Court in Part-1 Award answered the preliminary issue and held that the Inquiry was conducted properly and in keeping with the principles of natural justice, but the findings of the Inquiry Officer were perverse. The parties thereafter proceeded to lead evidence before the Labour Court. The Management examined Viresh Tolia, Director and Shrikant Singh, Supervisor whereas the employee examined herself. It is obvious that she was subjected to a long and searching cross examination. The Labour Court by the impugned award recorded a finding that even if the charges would have been taken to be proved, then in that case also for such absenteeism the punishment would have been shockingly disproportionate and, therefore, the order of dismissal was required to be quashed and set aside.

5. From the evidence placed before the Inquiry Officer as well as the Labour Court, it is clear that the findings of the Inquiry Officer holding the charge as proved were perverse. The Inquiry Officer noted that the employee never approached the Government Labour Officer, if she was allegedly kept away from work from 5/7/1993, there was no evidence to show that she was forcibly kept away from the factory and she could not lead any evidence in support of her contention that she was not allowed to resume duties. It has come in the evidence of Viresh Tolia that the employee lodged a complaint with Wagle Police Station on 7/7/1993 and had also approached the Government Labour Officer vide letter dated 24/7/1993 and in reply to the same the company had submitted its reply dated 26/7/93 (Exh.43/12). He also admitted that subsequently also the employee had submitted complaints and the company had sent its reply dated 4-9-93 (Exh.43/8). He also admitted that the wages of the employee were released for the month of June 1993 only after the Government Labour Officer intervened vide his letter dated 17/7/1993.

5A. It was the specific case of the employee that in the month of May 1993, Mr. Viresh Tolia had handed over one letter which was in English and she was called upon to sign the same. She asked for time to get the contents of the said letter read over from someone else as she did not understand English. She wanted to show the said letter to her husband before signing the same. This was not accepted by Mr. Tolia and she was kept away from work from 9/5/1993 till 4/7/1993. She had approached the Government Labour Officer vide her letter dated 13/5/1993 (Exh.56). Another letter dated 11/6/1993 (Exh.57) was also submitted by her to Government Labour Officer which was again followed by the letter dated 20/6/1993 (Exh.58). She was not allowed to report to duty on 5/7/1993 and when she again reported for duty on the next day she was not assigned any work. On 1/8/1993 she went to the factory to receive her wages but she was sent back without payment of wages and, therefore, she went to the Government Labour Officer. After she filed the complaint with the police station at Exh.59, the police contacted the company on telephone and

Mr.Viresh Tolia informed the police station that he was going to pay salary to her. Instead, the company proceeded to issue charge-sheet and alleged that she had remained unauthorisedly absent for 52 days. The assertions made by the employee regarding the coercive action by the Management for not allowing her on duty or after reporting for duty not assigning any work. As per the Management it was its prerogative either to assign the work or not to assign the work and so long as employee paid her wages, the employer cannot be alleged to have committed any unfair labour practice in that behalf.

6. The Labour Court has considered the evidence of the respective parties as adduced before it and also the report of the Inquiry Officer and recorded a finding that the employer was resorting to such actions in the past as well. An incident of 1991 was also recorded on the basis of the evidence and it, therefore, came to the conclusion that the charge was required to be dropped. On the contrary the allegations made by the employee found favour with the Labour Court and rightly so. The findings recorded by

the Labour Court are a possible view on assessment of the evidence placed before it and, therefore, the award passed on such findings does not call for interference by exercising powers under Article 227 of the Constitution of India. The contention of the Management that the employee remained absent continuously for 52 days could not be proved by the employer and the findings recorded by the Inquiry Officer to the contrary have been rightly held to be perverse. No fault could be found with the relief granted by the Labour Court in the impugned award.

7. Hence, the challenge to the impugned award must fail and the petition is hereby rejected summarily.

(B.H. Marlapalle,J.)